**C.R.No.165/2006**

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. CIVIL REVISION PETITION NO.165/2006

Mahendra Kumar Jain

Vs.

Nischal Kumar Jain & Anr.

DATE OF ORDER :: 07/11/2006

**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. Sushil Kumar Jain, for petitioner

Instant revision petition has been filed against the order dated 20th February, 2006 whereby the appeal preferred by the petitioner u/s.37 of the Arbitration & Conciliation Act has been dismissed by the learned District Judge, Dausa.

Petitioner and so also respondent No.1, both were partners of Vardhman Industries. According to him, the alleged firm was closed somewhere in January, 2003. To resolve the dispute Hon'ble Justice P.C. Jain (Retired) has been appointed as sole Arbitrator. During pendency of the arbitration proceedings, learned Arbitrator appointed Shri Ashok Kumar Sharma, Advocate to file suit against some persons/firms for recovery of certain amounts lying due towards Vardhman Industries and the petitioner filed the suit with the consent of both the parties. During pendency of the proceedings, application was filed by respondent No.1 for seeking permission to file a suit against M/s. Anupam Talc Pvt. Ltd., Udaipur and a notice was also given by respondent No.1 to the above firm on behalf of sole Arbitrator. M/s. Anupam Talc Pvt. Ltd submitted their reply stating inter alia

that there was no credit balance lying in account of Vardhman Industries. The application was submitted by respondent No.1 seeking permission of filing suit and the present petitioner filed reply to the application. After taking objection into consideration, the Arbitrator vide his order dated 18th August, 2005 granted permission to respondent No.1 of filing suit on the ground of furnishing an undertaking by a solvent party to compensate the firm in case any loss occasioned to the firm by filing of the suit and that the undertaking shall be for a sum of Rs.1 lac. Against the said order granting permission to file suit, the petitioner-appellant, who is one of the partners of Vardhman Industries, filed appeal u/s.37 of the Arbitration & Conciliation Act, which has been dismissed by the learned District Judge, Dausa vide his order impugned dated 20th February, 2006.

Counsel for petitioner submits that the objections were raised by him that there is already a Suit No.262/05 pending before the District Judge, Udaipur between M/s. Anupam Talc Pvt. Ltd. Vs. Vardhman Industries and all the objections can be examined in the pending suit, referred to supra. As such, there is no necessity of granting permission to respondent No.1 for filing of the suit.

I have considered the submission made by the counsel and also perused the finding recorded under the order impugned.

The suit, which is stated to be pending before the District Judge, Udaipur, is between M/s. Anupam Talc Pvt. Ltd. Vs. Vardhman Industries and the permission, which has been sought for filing of the suit, is by one of the partners of Vardhman Industries for settlement of

accounts in relation to another partner to the present revision petition in the instant case and even before granting permission, the learned Arbitrator has taken full care and pre-caution in asking to furnish undertaking.

I do not find any error of jurisdiction or material irregularity committed in passing the order impugned dated 20th February, 2006.

Consequently, the present revision petition fails and is hereby dismissed.

**[AJAY RASTOGI],J.**

FRBOHRA,JR.P.A.